

Selected Documents from Claim File

Claim No. LRF-2001-0621-01

Claim Amt. : \$1,184.53 Initial Entry Date : 06/21/2001

Claimant : Eyre Lighting & Design Inc

Property Desc. : See Comments

Property Addr. : 4616 S Zenia Meadows Court
Murray, UT 84107

STATUS : PENDING (BOARD HEARING)

Comments Page: 001 UserID: kschwab

Lot 15 Ridge Line

Associated Addresses

Type : Claimant Legal Counsel

DOPL # : - -

Firm Nm :

Name : John D Morris

10 E South Temple STE 600

Salt Lake City, UT 84133

(801) 521-4135

Type : Claimant Address

DOPL # : 00-369310-0000

Firm Nm : Eyre Lighting & Design Inc

Name : Jayson Eyre

11538 S State St STE 300

Draper, UT 84020

(801) 571-3221

Type : Home Owner - Secondary

DOPL # : - -

Firm Nm :

Name : Goldie Smeltzer

4616 S Zenia Meadows Court

Murray, UT 84107

() -

Type : Home Owner - Primary

DOPL # : - -

Firm Nm :

Name : Robert Smeltzer

4616 S Zenia Meadows Court

Murray, UT 84107

() -

Type : Non-Paying Party Legal Counsel

DOPL # : - -

Firm Nm :		
Name	:	John T Morgan
		525 E 100 S 5th Floor
		Salt Lake City, UT 84102
		(801) 532-2666
Type	:	Non-Paying Party - Primary
DOPL #	:	00-293892-5501
Firm Nm	:	Castle Homes LLC
Name	:	Mike Alvey, qualifier
		9136 S State St
		Sandy, UT 84070
		() -
Type	:	Original Contractor/Developer
DOPL #	:	00-293892-5501
Firm Nm	:	Castle Homes LLC
Name	:	Mike Alvey, qualifier
		9136 S State St
		Sandy, UT 84070
		() -
DEMOGRAPHIC INFORMATION		
Claim #:	LRF-2001-0621-01	Claimant: Eyre Lighting & Design Inc
DOPL Licensee:	yes	
Entity Type:	Corporation	
Number of Employees:	10-19	
Gross Annual Revenue:	1M-4.99M	
Years In Business:	5-9	
Claiming Capacity:	Supplier	
NON-PAYING PARTY		
DOPL Licensee:	no	
Entity Type:		
===== CLAIMS PROCESSING INFO =====		
	Date Recieved	Date Forwarded
Front Desk	06/21/2001	
LRF Special-Setup,Filing,CRIS	07/02/2001	
Permissive Party Response	07/22/2001	DEADLINE*****
Substantive Review	07/25/2001	
Claim Disposition	Approve	07/25/2001
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Claim is complete and should be paid in the amounts shown on the Payment Checklist.

Note: Fund recommends payment of post-judgment attorney fees and costs substantially different from amount claimed by Claimant. Board is asked to carefully review comments and recommend any adjustments as appropriate.

Board Disposition

JURISDICTIONAL CHECKLIST =====

Completion Of QS	07/20/2000
Civil Bkcy Filing	12/06/2000
Difference	139

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Qualified services date per judgment findings.

Civil action filing date per court date stamp.

Civil Judg/Bkcy Filing	04/13/2001
LRF App Filing	06/21/2001
Difference	69

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Judgment entry date per Notice of Entry.

Claim filing date per DOPL date stamp.

===== COMPLETE APPLICATION CHECK-LIST =====

Form Submitted	Yes	06/21/2001		
Form Completed	Yes	06/21/2001		
Fee	Yes	06/21/2001	0000-34-9013	ICN
Signed Cert/Aff	Yes	06/18/2001		
Cert of Service	Yes	06/21/2001		
Demog. Questionnaire	Yes	06/21/2001		

===== SUPPORTING DOCUMENTS =====

Written Contract	Yes	Written Contract	04/13/2001
Licensing Statute	Yes	License	10/10/1995
Full Payment	Yes	Affidavit	04/13/2001
Civil Action/Bankrupt	Yes	Complaint	12/06/2000
Entitlement to Pmt.	Yes	Civil Judgment	04/13/2001
Exhaust Remedies	Yes	SO/RS/WE/RE	04/20/2001

===== REQUIRED FACTUAL FINDINGS CHECK-LIST =====

Claimant Qualified Beneficiary Yes

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Claimant is a supplier and registered with the Fund January 20, 1999 (registration # 369310-5550).

Written contract exists Yes

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Per judgment finding para. 11 & 12

Original Contractor Licensed Yes

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Original contractor held license 293892-5501 from October 19, 1995 until surrendering it on April 24, 2001.
License was active and in good standing until surrender.

Owner PIF to Contractor Yes

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Per judgment finding para. 15

Residence Own/Occ as defined Yes

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Per judgment findings para. 7, 9 & 10

Residence Single Family/Duplex Yes

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Per judgment findings para. 7, 9 & 10

Contract For QS Yes

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Per judgment findings para. 17 Claimant provided electrical materials for use by NPP in construction of
incident residence.

Claimant brought Civil Action Yes

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On April 13, 2001 NPP stipulated to entry of judgment in favor of Claimant.

Exhausted Remedies		Yes
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Supp Order issued April 20, 2001 and served same day. Supp Proc held April 26, 2001. Outcome of Supp Proc is not known.		
Note: independent of this claim, Fund has confirmed that NPP was involuntarily petitioned into bankruptcy on June 15, 2001. Therefore, additional collection efforts by Claimant would be pointless.		
Adequate \$ in LRF Fund		Yes
Statutory Limit/Payment		no
Comments	Page: 001	UserID: ewebster
Total payments on incident residence to date: \$0		
Exceed Monetary Cap		No
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Not applicable		
Un-reimbursed Payments		no
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To date Fund has paid \$0 of claims on behalf of Claimant and has received \$0 of reimbursements.		

Claim Number:	LRF-2001-0621-01	NCA Number:	NCA-2000-1207-12	Claim Type:	Informal
Claimant Name:	Eyre Lighting & Design Inc				
	Jdg. \$ Informal / Payable \$ Formal	Apportioned % 100.00	CLAIMED	DIFERENCES	
PRINCIPAL AMOUNT	800.00	800.00	800.00	0.00	
ATTORNEY FEES	0.00	0.00	0.00	0.00	
COSTS	27.35	27.35	27.35	0.00	
INT. % 0.00	93.11	93.11	89.11	-4.00	
PRE SUB-TOTAL	120.46	120.46	116.46	-4.00	
ATTORNEY FEES	95.14	95.14	252.63	157.49	
COSTS	2.45	2.45	15.44	12.99	
INT. % 0.00	0.00	0.00	0.00	0.00	
POST SUB-TOTAL	97.59	0.00	268.07	170.48	
TOTAL*****	1,018.05	1,018.05	1,184.53	166.48	

QUALIFIED SERVICES COMMENT		
Comments	Page: 001	UserID: ewebster
Qualified services amount per judgment finding para. 6. All other items allocated among related claims based on ratio of claim-specific qualified services amount to total qualified services amount.		
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PRE JUDGEMENT ATTORNEY FEE COMMENT

PRE JUDGEMENT COSTS COMMENT

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Per judgment

PRE JUDGEMENT INTEREST COMMENT

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Per UCA 38-11-203(3)(c) interest calculated at 12% from payment due date to claim approval date--net of any delays attributable to the claimant:

DATES FOR CLAIM:

Pmt Due Date: Per invoice terms of sale were N/30 (interest begins this date)

Board Hearing: August 8, 2001 (interest terminates this date)

POST JUDGEMENT ATTORNEY COMMENT

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Claimant provided attorney's affidavit of costs and fees. Per affidavit attorney has incurred \$1,649.00 of attorney fees in preparing and processing claim. However, only \$621.00 was incurred after judgment was entered. Those fees are allocated among related claims. All other fees were disallowed by judgment and, consequently, are disallowed by the Fund. This determination rests on the fact the judgment does not provide for augmentation. Rather, it reads: ". . . together with interest on the total judgment . . . , including after-accruing costs incurred in collection until this judgment is paid in full." Clearly, the only amounts that can be paid are those that arise after the judgment date because the judgment is silent regarding payment of any fees incurred prior to the judgment date.

Portion of post-judgment fees allocable to this claim: \$95.14

R156-38-204(b) limit for this claim: \$264.00

Fees awarded to lesser of allocable portion or limit.

POST JUDGEMENT COSTS COMMENT

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Claimant provided attorney's affidavit of costs and fees. Per affidavit attorney has incurred \$279.35 of total costs. However, \$143.35 is for costs not payable by the Fund (i.e. photocopies and runner fees). Remaining \$136.00 allocated among related claims.

Portion allocable to this claim: \$20.84

POST JUDGEMENT INTEREST COMMENT

NO Disposition Checklist Information

Minutes from Board Meeting Discussion
Claim No. LRF-2001-0621-01

August 8, 2001

All claims have the same problem. The Judgment does not address costs or attorney fees.

The Fund recommends the claims be paid with pre-judgment attorney fees of \$0.00 because that is the amount awarded in each of the incident judgments. UCA § 38-11-203(3)(e) provides “the director shall order payment of attorney fees in the amount stated in a judgment.” In this case the judgment is silent as to the awarding of attorney fees for work performed prior to the entry of judgment. As such, the Fund asserts only post-judgment attorney fees are payable—the judgment does allow for augmentation.

Attorney Morris argued the judgment did not award attorney fees because his clients were only entitled to such fees if they foreclose on the liens. By electing to pursue only the NPP the claimants were bound by their contracts, which do not allow for attorney fees, and could not have attorney fees included in the judgment. Mr. Morris believes that the intent of the Legislature in this statute was to make the claimant whole by awarding attorney fees and costs. He indicated that he had received attorney fees in prior claims filed with the program.

Mr. Walker, the division counsel, indicated that the problem could be resolved by making sure a written contract with terms described is used. If the claimant loses this time, it’s a consequence of doing business and the claimant is now aware of the requirements. Attorney Morris informed the board that the results were unfortunate for his client.

Mr. Jensen moved to recommend payment of the claims including a denial of payment of attorney’s fees and costs as per the program recommendation. Mr. Dennis seconded. All voted in favor of the motion.

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LIEN RECOVERY :	ORDER
FUND CLAIM OF EYRE LIGHTING & :	
DESIGN, INC. ("CLAIMANT") REGARDING :	
THE CONSTRUCTION BY CASTLE HOMES, :	
LLC ("NONPAYING PARTY") ON THE :	
RESIDENCES OF ROBERT & GOLDIE :	Claim No. LRF-2001-0621-01
SMELTZER; JOHN PILCHER; ALLESEN & :	through LRF-2001-0621-
LYNETTE PECK; JETT & BRITTANY :	07, inclusive
JOHNSON; ALLEN & DONNA WATERS; :	
DANIEL & TIFFANY GUNTHER; AND :	
SPENCER & KIMBERLY NORTON :	

Pursuant to the requirements for a disbursement from the Residence Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(1) (2001) the Director of the Division of Occupational & Professional Licensing of the State of Utah, being advised by the Residence Lien Recovery Fund Board and being apprized of all relevant facts finds that:

1. The incident residence is an "owner-occupied residence" as defined in UTAH CODE ANN. § 38-11-102(16) (2001);
2. The owner of the incident residence entered into a written contract with an original contractor licensed or exempt from licensure pursuant to Utah Code Title 58, Chapter 55, a real estate developer, or a factory built housing retailer as provided in UTAH CODE ANN. § 38-11-204(3)(a) (2001);
3. Homeowner paid the original contractor, real estate developer, or factory built housing retailer in full according to the terms of the contract and any modifications thereto as required by UTAH CODE ANN. § 38-11-204(3)(b) (2001);

4. Claimant was a qualified beneficiary during the construction on the incident residence;
5. Claimant complied with the requirements of UTAH CODE ANN. § 38-11-204; and
6. There is adequate money in the fund to pay the amount ordered.

WHEREFORE, the Director of the Division of Occupational & Professional Licensing orders that the above-encaptioned claim is payable from the Residence Lien Recovery Fund, and that Claimant be paid \$5,221.83 for qualified services, plus \$0.00 of pre-judgment attorney fees, \$178.55 of pre-judgment costs, \$621.00 of post-judgment attorney fees, \$16.00 of post-judgment costs, and \$623.01 of interest for a **total claim payment of \$6,660.39**. The claim-specific amounts are set forth in Table No. 1 below.

Table No. 1: Claim-Specific Payment Amounts

<u>Claim Number</u>	<u>Homeowner</u>	<u>Qualified Services</u>	<u>Attorney Fees</u>		<u>Costs</u>		<u>Interest</u>	<u>Total</u>
			<u>Pre-Jdg</u>	<u>Post-Jdg</u>	<u>Pre-Jdg</u>	<u>Post-Jdg</u>		
LRF-2001-0621-01	Robert & Goldie Smeltzer 4616 S Zenia Meadows Ct, Murray UT 84107	\$800.00	\$ -	\$95.15	\$27.35	\$2.45	\$93.11	\$1,018.06
LRF-2001-0621-02	John Pilcher 738 E Grand Cayman Dr, Murray UT 84107	800.01	-	95.15	27.35	2.45	97.84	1,022.80
LRF-2001-0621-03	Allesen & Lynette Peck 773 E Grand Cayman Dr, Salt Lake City UT 84124	603.47	-	71.80	20.65	1.85	74.00	771.77
LRF-2001-0621-04	Jett & Brittany Johnson 11911 S Mother Lode Ct, Herriman UT 84065	585.77	-	69.68	20.03	1.80	68.17	745.45
LRF-2001-0621-05	Allen & Donna Waters 11891 S Mother Lode Ct, Herriman UT 84065	1,157.77	-	137.62	39.57	3.54	141.52	1,480.02
LRF-2001-0621-06	Daniel & Tiffany Gunther 11892 S Mother Lode Ct, Herriman UT 84065	600.00	-	71.35	20.52	1.84	69.83	763.54
LRF-2001-0621-07	Spencer & Kimberly Norton 11906 S Powder Monkey Cove, Herriman UT 84074	674.81	-	80.25	23.08	2.07	78.54	858.75
Totals		\$5,221.83	\$ -	\$621.00	\$178.55	\$16.00	\$623.01	\$6,660.39

The Director of the Division of Occupational and Professional Licensing also orders that following amounts from the above-encaptioned claims are denied: \$1,028.00 pre-judgment attorney fees exceeding the amount awarded in the judgment and \$84.80 of post-judgment costs not taxable pursuant to Utah case law.

With respect to payment of attorney fees, UTAH CODE ANN. § 38-11-203(3)(e) provides: “the director shall order payment of attorney’s fees in the amount stated in a judgment.” The judgment underlying this claim awards \$0.00 of attorney fees but does allow Claimant to collect “after-accruing costs incurred in collection until this judgment is paid in full.” A strict reading of UTAH CODE ANN. § 38-11-203(3)(e) would indicate that, because the judgment awarded \$0.00 of attorney fees, no attorney fees should be paid. A reasonable interpretation of the judgment language would allow for inclusion of post-judgment attorney fees within the parameters of “after-accruing costs.” The Director accepts this interpretation. Therefore, all post-judgment attorney fees properly documented as required by UTAH ADMINISTRATIVE CODE § R156-38-204d(2) are allowed. However, because the judgment clearly does not allow for payment of any pre-judgment attorney fees, all of those fees are denied.

With respect to payment of costs, UTAH CODE ANN. § 38-11-203(3)(d) provides:

The director shall order payment of costs in the amount stated in the judgment. If the judgment does not state a sum certain for costs, or if no judgment has been obtained, the director shall order payment of reasonable costs as supported by evidence. The claim application fee as established by the division pursuant to Subsection 38-11-204(1)(b) is not a reimbursable cost.

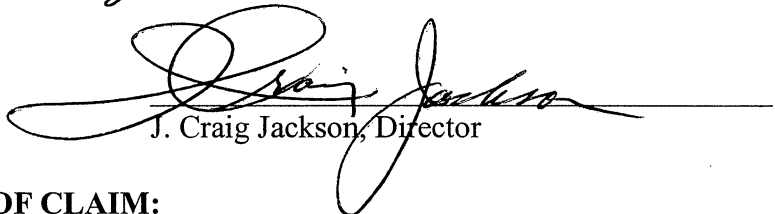
The term “reasonable costs” is defined by case law rather than by statute or rule. In the claim at hand, the disallowed post-judgment costs are all for photocopies and courier fees. Both of those

costs are deemed nontaxable in *Morgan v. Morgan*, 795 P.2d 684 (Utah Ct. App 1990) and therefore cannot be recovered by Claimant.

Claimant understands the Division's right of subrogation as set forth in UTAH CODE ANN. § 38-11-205 (2001). Upon negotiation of the draft from the Fund, Claimant's claim against the nonpaying party is assigned to the Division. Claimant's judgment against the nonpaying party is automatically assigned to the Division and Claimant shall not satisfy the judgment without written consent from the Division. Claimant shall render the necessary assistance to the Division in its efforts to enforce the subrogation rights. Claimant shall not fail to act or commit any act that may cause the assigned claim to be compromised. Further, Claimant shall remit to the Division all funds received from any source, other than the Fund, that were paid with the intention of reducing the underlying obligation of this claim.

Before negotiating the draft paying this claim, Claimant shall release any lien filed against the owner-occupied residence and hold the homeowner harmless for the qualified services involved in this claim.

DATED this 13th day of August, 2001.


J. Craig Jackson, Director

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of UTAH ADMINISTRATIVE CODE, § R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**